

1 LYNNE C. HERMLE (State Bar No. 99779)
2 JOSEPH C. LIBURT (State Bar No. 155507)
3 CHRISTIAN N. BROWN (State Bar No. 233147)
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
5 1000 Marsh Road
Menlo Park, CA 94025
Telephone: (650) 614-7400 Fax: (650) 614-7401

5 Attorneys for SEARS, ROEBUCK AND CO.

6 STANLEY D. SALTZMAN (State Bar No. 90058)
7 MARCUS J. BRADLEY (State Bar No. 174156)
LYNN P. WHITLOCK (State Bar No. 127537)
8 MARLIN & SALTZMAN
29229 Canwood Street
Agoura Hills, CA 91301
9 Telephone: (818) 991-8080 Fax: (818) 991-8081

10 WALTER HAINES, ESQ. (State Bar No. 71075)
UNITED EMPLOYEES LAW GROUP
11 110 Pine Avenue, Suite 725
Long Beach , California 90802
12 Phone: (888) 474 - 7242; Fax: (866) 435 - 7471

13 Attorneys for PATRICK RODRIGUEZ

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO/OAKLAND DIVISION

17
18 PATRICK RODRIGUEZ, as an individual
and on behalf of all others similarly
situated,

Case No. 3:10-cv-01268-SC

20 Plaintiff
21 vs.

**STIPULATION AND [PROPOSED]
ORDER WITHDRAWING MOTION TO
DISMISS, LIFTING STAY AND
DISMISSING ACTION WITH
PREJUDICE**

22 SEARS ROEBUCK AND
CO., a corporation; and DOES 1 through
23 100, inclusive,

24 Defendants

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STIPULATION
CASE NO. 3:10-cv-01268-SC

STIPULATION

WHEREAS, Patrick Rodriguez ("Rodriguez") worked as an Assistant Store Manager for Sears, Roebuck & Co. ("Sears") in Oakland, California, from 2008 until January 11, 2010.

WHEREAS, on January 25, 2010, Rodriguez and his wife filed for Chapter 7 bankruptcy (“Bankruptcy Case”) in the United States Bankruptcy Court in the Northern District of California (“Bankruptcy Court”).

WHEREAS, on January 26, 2010, the Bankruptcy Court appointed a Bankruptcy Trustee and set a meeting of creditors for February 24, 2010, in Oakland, California.

WHEREAS, on February 11, 2010, Rodriguez filed the instant wage-and-hour class action against Sears and Sears Holdings Corp. in the Superior Court of California, County of Alameda, arising from his former employment (“the Action”). In his complaint, Rodriguez alleged: (1) failure to pay overtime wages, (2) failure to allow and pay for meal and rest periods, (3) failure to pay compensation upon discharge, (4) failure to provide proper wage statements, and (5) violation of California Business and Professions Code §§ 17200-17208.

WHEREAS, on February 24, 2010, Rodriguez attended the required meeting of creditors.
See 11 U.S.C. § 341 (a).

WHEREAS, on March 25, 2010, Sears and Sears Holdings Corp. removed this Action to this Court in the Northern District of California.

WHEREAS, on April 27, 2010, the Bankruptcy Court granted an Order Discharging Debtor and Final Decree. The Bankruptcy Court closed Rodriguez's Bankruptcy Case on May 7, 2010.

WHEREAS, Rodriguez did not disclose any potential claims against Sears and/or Sears Holdings Corp. and did not disclose this Action to the Bankruptcy Court prior to closing his Bankruptcy Case on May 7, 2010.

WHEREAS, on May 25, 2010, Rodriguez, on the one hand, and Sears and Sears Holdings Corp. stipulated for Rodriguez to file a First Amended Complaint.

WHEREAS, on June 28, 2010, Sears and Sears Holdings Corp. filed a Motion to Dismiss and Strike the First Amended Complaint.

1 WHEREAS, on July 16, 2010, Rodriguez and Sears stipulated for Rodriguez to dismiss
 2 Sears Holdings Corp. as a defendant and file a Second Amended Complaint.

3 WHEREAS on September 3, 2010, Sears filed a motion for summary judgment on the
 4 grounds that Rodriguez had no standing to pursue his claims alleged in the Second Amended
 5 Complaint, and that he was judicially estopped from asserting his claims as the result of his failure
 6 to disclose them in his Bankruptcy Case.

7 WHEREAS, on September 16, 2010, Rodriguez moved to reopen his Bankruptcy Case to
 8 amend his petition to list this Action.

9 WHEREAS, on October 5, 2010, this Court stayed this Action pending resolution of
 10 Rodriguez's efforts in Bankruptcy Court.

11 WHEREAS, on November 8, 2010, the Bankruptcy Court granted Rodriguez's motion to
 12 reopen his Bankruptcy Case and on November 19, 2010, the Bankruptcy Court appointed a
 13 Trustee.

14 WHEREAS, on April 13, 2011, the Trustee moved for approval of sale and compromise to
 15 sell any and all claims against Sears, which Rodriguez had or could have against Sears as of the
 16 commencement of the Bankruptcy Case, including this Action ("Claims Against Sears").

17 WHEREAS, on April 13, 2011, the Trustee provided notice of the proposed sale and
 18 compromise such that any party in interest who wished to object must have filed and served a
 19 written objection no later than 21 days from the date of the notice.

20 WHEREAS, on May 6, 2011, the Trustee declared that no objection was filed.

21 WHEREAS, on May 10, 2011, the Bankruptcy Court granted the Trustee's motion, and
 22 approved the sale and compromise to sell Rodriguez's Claims Against Sears to Sears for the
 23 purchase price of \$27,000. *See* Exhibit A attached.

24 WHEREAS, on June 1, 2011, the Trustee acknowledged that he received \$27,000 of cash
 25 consideration, and transferred, assigned and conveyed to Sears the Claims Against Sears. *See*
 26 Exhibit B attached.

27 WHEREAS, Rodriguez's potential claims against Sears in this Action now belong to Sears.

28 WHEREAS, on July 7, 2011, Sears filed a Request to Lift Stay, Motion to Dismiss or in the

1 Alternative Amended Motion for Summary Judgment, and Motion for Attorney's Fees and Costs
2 ("Motion to Lift Stay and Dismiss").

3 WHEREAS, the parties have further met and conferred and agreed that this Action must be
4 dismissed.

5 NOW, THEREFORE, IT IS HEREBY STIPULATED as follows:

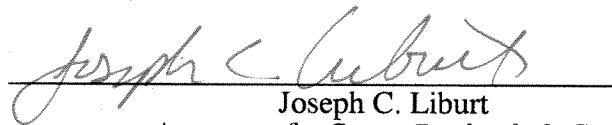
6 1. Sears withdraws its Motion to Lift Stay and Dismiss;

7 2. The proceedings in the Bankruptcy Court having now terminated, this Court's stay
8 which was for the purpose of allowing the Bankruptcy Court proceedings to play out, should be
9 lifted.

10 3. This Action be dismissed in entirety pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii),
11 with prejudice as to Rodriguez's individual claims, Rodriguez and Sears to bear their own fees and
12 costs, respectively.

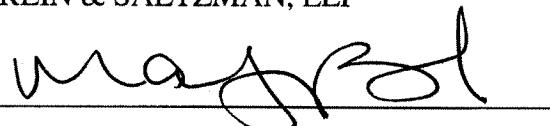
13 Dated: July 31, 2011

14 LYNNE C. HERMLE
JOSEPH C. LIBURT
CHRISTIAN N. BROWN
ORRICK, HERRINGTON & SUTCLIFFE LLP

15 
Joseph C. Liburt
16 Attorneys for Sears, Roebuck & Co.
17

18 Dated: July 31, 2011

19 STANLEY SALTZMAN
MARCUS J. BRADLEY
LYNN WHITLOCK
MARLIN & SALTZMAN, LLP

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Marcus J. Bradley
21 Attorneys for Patrick Rodriguez
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ORDER

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THE COURT, having received and considered Rodriguez's and Sears' stipulation to lift
the Court's stay entered on October 5, 2010, and dismiss the Action in entirety, with prejudice as
to Rodriguez's individual claims, and finding good cause appearing therefore,

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IT IS HEREBY ORDERED that the Action is dismissed, and Rodriguez's individual
claims are dismissed with prejudice. Rodriguez and Sears are to bear their own fees and costs,
respectively.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

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Dated: 8/2/11

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